

# **UNDT/2012/109, Tiwathia**

## UNAT Held or UNDT Pronouncements

t. The applicant submits that her request for suspension of action is timely as the contested administrative decision has yet to be implemented. Legal Pronouncement: The decision to select a successful candidate is implemented upon the candidate's unconditional acceptance of the offer presented to him which results in the formation of a binding employment contract between the candidate and the Organization. The formation of the employment contract, which results in the implementation of the post selection decision, will precede the date on which a successful candidate will assume his/her new functions. The date on which a successful candidate is to assume her/his functions is therefore not a matter of implementing the selection decision but one of executing the resultant employment contract.

## Decision Contested or Judgment/Order Appealed

The Applicant appealed her non-selection to a D-1 level post.

## Legal Principle(s)

Summary: When the Tribunal is seized of the review of a contested post selection, the first question it has to ask itself, as part of a suspension of action, is whether the decision has been implemented. In view of the fact that the contested decision had already been implemented, the Tribunal is not competent to hear the merits of the suspension of action. Legal Pronouncement: The decision to select a successful candidate is implemented upon the candidate's unconditional acceptance of the offer presented to him which results in the formation of a binding employment contract between the candidate and the Organization. The formation of the employment contract, which results in the implementation of the post selection decision, will precede the date on which a successful candidate will assume his/her

new functions. The date on which a successful candidate is to assume her/his functions is therefore not a matter of implementing the selection decision but one of executing the resultant employment contract.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Tiwathia

## Entity

MSD/UNHQ

## Case Number(s)

UNDT/NY/2012/064

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

18 Jul 2012

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Suspension of action / interim measures  
Receivability

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

UNDT Statute

- Article 2.2

## Related Judgments and Orders

UNDT/2010/203  
2011-UNAT-111  
2011-UNAT-182